MBf CAPITAL BHD & ANOR

v.

TOMMY THOMAS & ANOR (NO 9)

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[CIVIL SUIT NO: S2-23-52-1996]
9 MAY 1998

CIVIL PROCEDURE: *Proceedings - Interrogatories - Discretion of court - Defamation action - Whether defendant should be made to answer interrogatories - Defence of denial and justification*

The plaintiffs sued the defendants for damages in defamation relating to the utterance of words by the 1st defendant which the plaintiffs alleged were slanderous and which were later published in an international magazine. The alleged defamatory words were uttered in September 1995 and published in November 1995, and related to the conduct of the plaintiffs and their counsel in relation to the administration of the Malaysian legal system. The 1st defendant was a partner in the 2nd defendant, a firm of advocates and solicitors.

The plaintiffs applied for interrogatories against the 1st defendant, seeking particulars, *inter alia*, of the 1st defendant's actual conversation with the writer of the alleged defamatory article.

The plaintiffs contended that the interrogatories were necessary as the 1st defendant's defence, being a denial that he had spoken the words attributed to him in the plaintiffs' statement of claim and alternatively a plea of justification, were inconsistent, and the 1st defendant had not filed an affidavit in response.

In opposing the application, the 1st defendant argued that it was not incompatible to raise a denial and alternatively justification as a defence, and since the question of interrogatories was a matter of law, there was no need to answer by way of an affidavit. It was also argued that the plaintiffs' application was a "fishing" expedition as the 1st defendant had never been quoted in the article as having uttered the alleged defamatory words. On the contrary, the words attributed to the 1st defendant showed that he had in fact responded to a statement made by the writer of the article by saying that Malaysian lawyers were questioning the intellectual capacity of the court and the integrity of its judges.

Held:

[1] Whilst it is acceptable to raise a defence of denial and a plea of justification, such a defence, in so far as it is intended to rely on the justification, must assume that the court will consider it either as an alternative plea or as part of the substantial defences. If the court were to accept justification as a defence, it had to accord the plaintiffs the right to seek relevant particulars where necessary, either by way of further and better particulars or interrogatories.

[2] A plea of justification must be broad enough to cover every injurious importation contained in the libel. A plaintiff must know precisely the case which he would face at trial and it is therefore imperative that the defendant must state clearly what defamatory meaning he intends to justify.

[3] Since it is the 1st defendant's submission that it was the statement made by the writer of the article which prompted the 1st defendant's response, it was only right that the 1st defendant should answer the interrogatories and attempt to justify his said statement. The allegations were serious ones and the plaintiffs were entitled to know if he uttered those words and if so, to prepare themselves to meet the case of justification.

[4] The answers sought could not be said to amount to a discovery of the 1st defendant's evidence, nor could they be said to be unreasonably wide, oppressive or irrelevant. As such, the 1st defendant was ordered to answer all the interrogatories sought.

[Application allowed with costs to the plaintiffs.]

Case referred to:
Sutherland v. Stopes [1925] AC 47 ***(foll)***

Other source referred to:
Libel and Slander, Carter-Ruck, 5th edn, pp 99, 103

For the plaintiffs - Dato' VK Lingam (Dato' V Sivaparanjothi & R Thayalan with him); M/s V Siva & Partners
For the 1st defendant - Raja Aziz Addruse (Darryl Goon, also a partner of the 2nd defendant, with him); M/s Raja Darryl & Loh
For the 2nd defendant - Cecil Abraham (RS Nathan & G Rajasingam with him); M/s Shearn Delamore & Co

Reported by Anne Khoo

JUDGMENT

RK Nathan J:

The Application

This is my ninth judgment in respect of this case. This relates to the plaintiffs seeking interrogatories in writing as against the 1st defendant and as a partner of the 2nd defendant. With reference to the article published in the November 1995 issue of the International Commercial Litigation Magazine entitled "Malaysian Justice on Trial", the plaintiffs sought the following interrogatories:

1. Did you not in or about September, October or November 1995 speak to David Samuels or any persons employed by or acting on behalf of the magazine International Commercial Litigation the words attributed to you in the article and set out in quotation marks in paragraphs 4(1) and 4(2) of the Statement of Claim dated 25.9.1996 filed in this action, or words to that effect?

2. If the answer to the interrogatory numbered 1 above is that you did:

   (1) Please state as well as you can remember:

   (a) what were the words which you so spoke;

   (b) when the said words were spoken? Specify the number of occasions you spoke, giving the dates and approximate times of the days you spoke;

   (c) the identity of the person or persons to whom you spoke the said words;

   (d) where you were when you spoke the said words;

   (e) the whereabouts of the person or persons to whom you spoke the said words.

   (2) Did you not speak the said words, or words to that effect, in answer to questions by the person or persons identified in answer to the interrogatory numbered 2(1)(c) above or in the context of discussions between you about the alleged widespread abuse of judicial procedures and/or the alleged corruption of the judiciary in Malaysia by Dato' V K Lingam for and in connivance with his clients, in particular, the Plaintiffs in relation to their case against East Asiatic Company ('EAC') in which you acted as Counsel for EAC and the Second Defendant acted as advocates and solicitors for EAC, or any of the said matters, and if so which?

The Relevant Quotes

The quote referred to in para. 4(1) reads:

> I acted for EAC. The procedural gymnastics in which the subsidiaries engaged during that dispute raise questions that cry out for answers. I point to the sequence of the two identical legal actions started in two different courts, one of which was then discontinued, as proof that the subsidiaries were trying to get their case before one particular judge, namely Judge Low Hop Bing. Lingam told Judge Vohrah on August 19 that the action they had started in Court No 5, on August 11, had to be withdrawn on August 14 because of typing errors. That simply cannot be right. If you compare the main document from Court No 5, which is supposed to have contained so many typing errors that it had to be withdrawn, with the main document put into Court No 2 (Low Hop Bing's court), you will see that there are absolutely no differences between them. And there are only two inconsequential differences between the supporting affidavits. The irresistible inference has to be that they wanted Low Hop Bing, and only Low Hop Bing, to hear their case. When everyone else involved agreed that all the actions should be brought together in Judge Vohrah's court, it was Lingam who insisted the subsidiaries' case should stay with Low Hop Bing.
>
> The Malaysian Bar Council's record shows that Lingam qualified in 1988. Since then Lingam has built up a small portfolio of clients all of whom are incredibly rich and very loyal to him, mainly Malaysian entrepreneurs.

The quote referred to in para. 4(2) reads:

> The present situation is terrible. One hears all sorts of gossip.
>
> Malaysian lawyers, have already decided that they should question the integrity of our judges, rather than the intellectual capacity of our courts ...

Applicants' Case

Dato' V.K. Lingam for the plaintiffs submitted that in the impugned article read as a whole, the 1st defendant was extensively and prominently quoted with reference to several other cases. He referred to the defence of the 1st defendant and in particular to para. 3.2 wherein the 1st defendant had denied he spoke those words as attributed to him in the statement of claim. However, in para. 3.1 of the defence the 1st defendant admits that in September 1995 he had spoken on the telephone several times to the said David Samuels. Then in para. 5 of the defence the 1st defendant admits that he was told by Samuels that the latter was writing an article for his said magazine about the Malaysian judiciary and sought background information on that topic from the 1st defendant.

Dato' Lingam then pointed out that apart from the denial, the 1st defendant had advanced a defence of justification and he argued that such a plea was totally inconsistent with a plea of a denial. However, he contended that the plea of justification would suggest that the 1st defendant was contending that the said words were true in substance and in fact. He also pointed out that there was no affidavit in response from the 1st defendant.

1st Respondent's Case

Raja Aziz Addruse, in opposing this application took two preliminary issues. Firstly, without relying on any authority he argued that it is not incompatible to deny and raise the plea of justification. He contended that the latter was an alternate defence. The second issue raised was that since the question of interrogatories was a matter of law there was no need to answer by way of an affidavit.

Pointing out to the quote referred to in 4(2), Raja Aziz Addruse submitted that those words were not uttered by the 1st defendant but by an unnamed senior lawyer. He submitted that clearly there was an element of 'fishing' in this case because the 1st defendant was never quoted in the article as having said the defamatory words. He urged me to draw an inference that the words "Because no one understands these decisions, people have really had to start questioning both the intellectual capacity of our courts and the integrity of our judges." must have been repeated to the 1st defendant by David Samuels for the 1st defendant to have made the comment to David Samuels for him to have said:

> Tommy Thomas says that many Malaysian lawyers have already decided which of those explanations they believe.

Court's Findings

Whilst I hold that it is acceptable to deny that the words connote a defamatory meaning, and at the same time to advance a plea of justification, it is my view that such a defence, in so far as it intends to rely on the plea of justification, must assume that this court will consider it, be it as an alternate plea as argued by the 1st defendant herein, or as part of his substantial defences. In the circumstances, if I accept justification as a defence for my consideration in this case, I must accord the plaintiffs the right to seek relevant particulars where necessary, either by way of an application for further and better particulars, or for interrogatories.

Plea Of Justification

A plea of justification must be broad enough to cover every injurious importation contained in the libel (see Carter-Ruck on *Libel and Slander* 5th edn, p. 99). In *Sutherland v. Stopes* [1925] AC 47 Lord Carson said at p. 96:

> The plea puts upon the defendant the burden of proving not only that the facts alleged to be defamatory are true, but also that any comments in so far as they contain statements or inferences of a defamatory character are also true.

In fact Carter-Ruck at p. 103 opines that:

> A defendant who pleads justification is required to deliver full particulars of the facts and matters upon which he relies in support of such a plea and the evidence at the trial in support of this plea will be strictly confined to these particulars.

I am of the view that more so when justification is taken as a defence, a plaintiff must know precisely the case which he would face at trial and it is therefore imperative that the defendant must state clearly what defamatory meaning he intends to justify.

As said by Lord Carson in *Sutherland* the plea of justification puts the burden of proving not only that the facts alleged to be defamatory are true but also that "any comments or so far as they contain statements or **inferences** of a defamatory character are also true" (emphasis provided).

Since it is the submission of Raja Aziz Addruse that I ought to draw an inference that because it was put to the 1st defendant by David Samuels that the intellectual capacity of our courts and the integrity of our judges were being questioned and that it was this that prompted Tommy Thomas to comment that many Malaysian lawyers have already decided which of those explanations they believe, it is only right and proper that the 1st defendant answers by way of interrogatories, and attempts to justify the questioning of the intellectual capacity of our courts and the integrity of our judges. These are serious allegations and the plaintiffs are entitled to know if the 1st defendant uttered those words and if he actually did so, then it is open for the plaintiffs to prepare themselves to meet the case of justification.

I cannot by any stretch of the law hold that these interrogatories are nothing more than a piscatorial adventure on the part of the plaintiffs. By looking at the statement of claim and at the interrogatories there is no room for contending that the plaintiffs are fishing. The answers sought cannot be tantamount to discovering the evidence which the 1st defendant intends to

adduce in support of his case; nor can it be said that the answers sought are unreasonably wide, oppressive or irrelevant. This is slander and I find that there is nothing to justify the 1st defendant in refusing to answer the interrogatories.

The 1st defendant will answer all the interrogatories sought. There will be costs to the plaintiffs.